

REDACTED

SITE: Smokey Mountain Smelter  
BREAK: 10.18  
OTHER: V.2

Blake Sterling/R4/USEPA/US  
08/13/2008 10:35 AM

To Teresa Mann/R4/USEPA/US@EPA  
cc  
bcc

Subject Fw: Smokey Mtn Smelters - Access & Sampling work

I think I failed to send you this e-mail which details communications Greg had with the State of Tenn. attorney. If I sent it please disregard.

— Forwarded by Blake Sterling/R4/USEPA/US on 08/13/2008 10:27 AM —

Greg  
Luetscher/R4/USEPA/US  
09/01/2006 11:04 AM

To Blake Sterling/R4/USEPA/US@EPA  
cc

Subject Fw: Smokey Mtn Smelters - Access & Sampling work

FYI

— Forwarded by Greg Luetscher/R4/USEPA/US on 09/01/2006 11:03 AM —

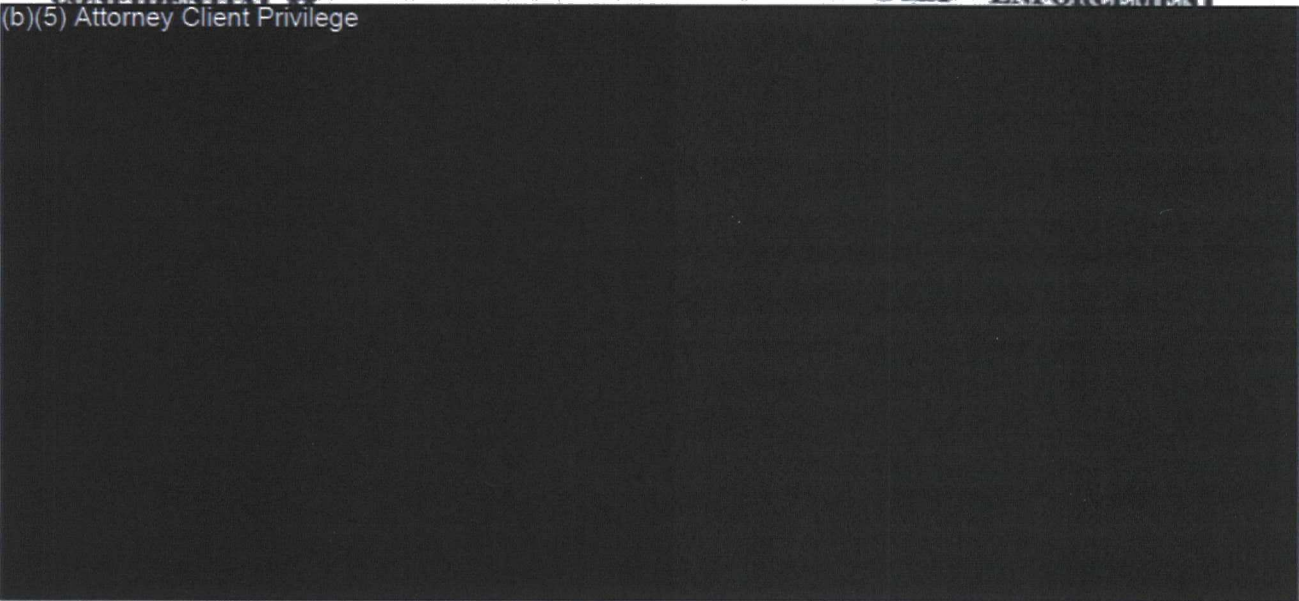
  
Greg  
Luetscher/R4/USEPA/US  
08/17/2006 10:44 AM

To Karen Buerki/R4/USEPA/US  
cc

Subject Smokey Mtn Smelters - Access & Sampling work

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**CONFIDENTIAL \*\***  
(b)(5) Attorney Client Privilege



Thanks.  
Greg

Exemption 7

- ☒ (A) Interference with Enforcement Proceedings  
☐ (B) Right to Fair Trial  
☐ (C) Unwanted Invasion of Personal Privacy



Gregory D. Luetscher  
Ph: (404) 562-9677  
Fax: (404) 562-9486

— Forwarded by Greg Luetscher/R4/USEPA/US on 08/17/2006 09:55 AM —



Steven Stout  
<Steven.Stout@state.tn.us>  
08/16/2006 10:51 AM

To Greg Luetscher/R4/USEPA/US@EPA  
cc Robert Powell <BG38014.1910NG07.Metro@state.tn.us>,  
Burl Maupin <Burl.Maupin@state.tn.us>  
Subject Re: Smokey Mtn Smelters - draft letter

Greg,

It's been a while since we've been in touch. What's going on in regard to the Smokey Mountain Smelters Site since our access letter was sent to Karen Buerki? Any work ongoing? Any planned date to enter the site and collect samples? Also, Burl Maupin sent a document to both of us a few weeks ago that appeared as a letter from an attorney for an investor in the business - the Smokey Mountain Smelters Corporation along with Daniel Johnson and David Witherspoon, Jr. I think that research on the property ownership has shown that at some point in the 1980's that Witherspoon apparently ended his involvement in Smokey Mountain Smelters (SMS). So, let's get back in touch. Thanks.

>>> <Luetscher.Greg@epamail.epa.gov> 06/21/06 2:13 PM >>>

Hi Steve,

Hi Steve,

Lets see if I can do this "by the numbers."

1. I'm not at all sure what will be the "route of access" so I can't be certain who are all the folks we'll need to contact. Karen, can you fill that part in with a somewhat better degree of certainty?
2. I can include Witherspoon and/or his attorney amongst the folks who'll get a letter and copy of TDEC's access designation from us. As along as we have an address that shouldn't even be a last minute problem.
3. I'd too like to see the real estate research we've got; I'll try again to get a complete copy from the CI, and I'll ask him to throw in a second copy so I can send it to you for your files. Doing so should assist us in any subsequent telephone discussions.

Finally, thanks for understanding about all the proposed changes I made even though, and only after I made them, I realized that you'd used the word "review" and not "change" in your message. It's funny, engineers et.al. don't take such things nearly as well as do attorneys.

Greg

Gregory D. Luetscher  
Ph: (404) 562-9677  
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Steven Stout  
<Steven.Stout@state.tn.us>  
To: Greg Luetscher/R4/USEPA/US@EPA  
06/20/2006 05:05  
cc: Karen Buerki/R4/USEPA/US@EPA  
PM  
Subject: Re: Smokey Mtn Smelters - draft letter

I don't object to changes. I'll have to look at this more thoroughly tomorrow. Burl corrected me on the acreage of the site and told me that it was actually three (3) parcels of approx. 29.3 acres in area. Also, the correct spelling for the name of the site is "Smokey" as in the

University of Tennessee mascot, not "Smoky", as in the mountain range  
Smokey Mountain Smelters. I mis-spelled this word in my draft. This  
is  
the name used on our state list of hazardous substances sites and is  
from the name of the corporation formed by Johnson and Witherspoon in  
1979.

As Greg and I discussed a description of the areal extent of the site  
is not necessary, but one concern that I have had is illustrated by  
the  
attachment. My understanding is that this site is bounded on two  
sides  
by RR tracks. Access to this site is over another tract with the  
address 1500 Maryville Pike. What I understood as SMS is the 7.75  
acres  
tract at 1508 Maryville Pike - although I understand that the extent  
is  
larger than I thought. The statute at TCA 68-212-216 allows access to  
property that is location to hazardous substances and to property that  
it is necessary to cross to get access to a hazardous substances site.  
My understanding is that the the property is not accessible across the  
tracks along the Maryville Pike but that rather the entrance road is  
off  
the street identified as Caleb Road and over this smaller tract that  
is  
an inset into 1508 Maryville Pike. This "inset" is owned by Maryville  
Pike Properties which is owned by David Witherspoon, Jr. Since I have  
spoken within the past few months to the attorney here in Nashville  
who  
represents Witherspoon - at least in another matter - about this  
potential site investigation, I would like to know if the plan is to  
enter over this property to the "main site"?

Is this property shown as having slightly more than one acre being  
considered as part of the site? Access should not be a problem with  
Witherspoon - although I'm sure liability will be contested. Due to  
past contact with this attorney, Bill Penny - and I am not sure that  
his  
scope of representation would extend to this matttter- I believe it is  
the ethical course to inform Mr. Penny that the EPA will be coming  
into  
the site over the property owned by a Witherspoon-asociaed  
corporation.  
We had an issue back several months ago in which a waste roll-off  
container was parked so as to obstruct the road leading to the  
entrance  
gate to the 1508 Maryville Pike property. This, again, is what I  
refer  
to - apparently only partially accurately- as the main site.

Greg, I would appreciate the opportunity to look at your research in  
the  
real estate. The letter can be revised according to your draft and my  
two changes above plus a residual mention of another site in Lenoir  
City.  
in my original version. I would like to get an answer about the route  
of  
access and be able to notify Witherspoon's attorney as a matter of  
professional courtesy if this property is going to be used for access.

Steven R. Stout  
Environmental Legal Counsel  
Tennessee Department of Environment & Conservation  
401 Church St., 20th fl.  
Nashville, TN 37243-1548  
(615)-532-0138  
fax 615)-532-0145

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>>> <Luetscher.Greg@epamail.epa.gov> 06/20/06 2:25 PM >>>

Steve,

I've attached a file containing my proposed changes. Once I started my review I'm afraid I took significant liberties with your draft, and for that I must apologize up-front. Although it may not be obvious or even apparent, I do indeed understand that it's a TDEC, and not an EPA, document so I merely propose the changes for your consideration. Thanks.

Greg

Gregory D. Luetscher  
Ph: (404) 562-9677  
Fax: (404) 562-9486

(See attached file: SMS-Draft Delegation from TN with GL's Mods.doc)

Steven Stout  
<Steven.Stout@state.tn.us>  
To  
Greg Luetscher/R4/USEPA/US@EPA  
06/19/2006 12:29  
cc  
Burl Maupin  
PM  
<Burl.Maupin@state.tn.us>, Dan  
Hawkins  
<Dan.Hawkins@state.tn.us>, Jim

Haynes <Jim.Haynes@state.tn.us>,

Joseph Sanders

<Joseph.Sanders@state.tn.us>,

Robert Powell

<Robert.Powell@state.tn.us>

Subject

Re: Smokey Mtn Smelters - access  
issue

Greg,

This is to give you a chance to review my draft of a letter for Mr. Haynes to sign. I think that Jim has the delegation of Commissioner's authority to sign this type letter for the Commissioner of this Department. If not - and I'll confer with Mr. E. Joseph Sanders - my boss, the General Counsel, on this issue. If not Mr. Haynes then the letter will be from Commissioner Jim Fyke to EPA as it was in the model

provided dealing with another state "superfund" site. Anyhow this is intended to bestow the access authority by state statute at TCA 68-212-216 on the EPA. And I have identified Ms. Karen Buerki and any subsequent OSC as the actual official within EPA to receive the entry and access authority. From our prior conversations I understood that you would make the widow Johnson aware of this letter and of EPA's plans.

I am sure that EPA will continue to work with Burl Maupin at a technical level on this site.

Steven R. Stout  
Environmental Legal Counsel  
Tennessee Department of Environment & Conservation  
401 Church St., 20th fl.  
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using the information. Please contact the sender immediately by return  
e-mail and delete the original message from you system.

>>> <Luetscher.Greg@epamail.epa.gov> 05/18/06 2:58 PM >>>

Steve,

I had passed along the information from your prior message (with the  
attached letter of course) to my program clients (Loften Carr and  
Karen  
Buerki), but I guess your message below means that neither Lofton nor  
Karen got in touch with their counterparts at TDEC. We had received  
regional management's blessing to utilize the delegated authority for  
the sampling, but I wasn't as convincing when it came to doing the  
actual removal under the State's delegated authority. I was on my  
way  
to obtaining access authority on consent from the surviving spouse  
and  
the two children from his previous marriage (to the extent they had  
it),  
but the attorney for the daughter put an end to that idea when she  
told  
me she was going to advise her client not to sign. So, it looks like  
I'm probably back to having to get a judicial warrant for the eventual  
removal, but that's why I'm here I suppose.

Frankly, a substantial part of what made the example you sent showing  
the delegation of the State's authority, particularly attractive was  
that  
it didn't seem at all complicated - mostly just the kind of fact-based  
stuff you mentioned in your message, below. Typically, something this  
seemingly-straightforward would be handled by the OSCs or somebody  
else  
in the Removal program, so I had anticipated they'd jump at it. But  
clearly I was mistaken; my experience to date had been that the EPA  
lawyers don't get dragged into the cleanup by the OSC until getting  
access to the site became confrontational or involved opposing  
counsel.

Where would the delegation letter originate, i.e., your office, the

technical staff, some place else entirely, etc? If you're the point-of-contact for the State then I suppose it makes to work through me to get this done, but it's certainly not a requirement. However, if

the attorneys' role would be less one of preparation and more of final review, I'll probably encourage Lofton and Karen to initially work via their counterparts at TDEC. Either way, I haven't entirely given up hope of convincing the Region to adopt this delegation concept in the future (I've got my eye on some summer interns for legal research), so it would be great if whatever we do for this case could be applied to future removals too. Who knows, it may even become a good habit.

Let

me know what you think.

Thanks.

Greg

Gregory D. Luetscher

Ph: (404) 562-9677

Fax: (404) 562-9486

Steven Stout

<Steven.Stout@st

ate.tn.us>

To

Greg Luetscher/R4/USEPA/US@EPA

05/18/2006 02:50

cc

PM

Subject

Re: Smokey Mtn Smelters - access  
issue

Greg,



I heard that EPA is still interested in the access authority under the Tennessee statute. Here is an example of past use of this authority in designating a third party. In this case it was a city that had received a brownfield grant from EPA. If you could inset a little background and the name and address of the EPA official to which this should be directed, we can provide rather quickly. srs

>>> <Luetscher.Greg@epamail.epa.gov> 03/29/06 4:24 PM >>>  
Steve,

Wow, fantastic ! Thanks. I will be in touch, probably tomorrow. I wasn't really even sure my voice mail message made any sense. Two Sundays ago I spoke with the widow for more than an hour trying to learn about and/or locate Johnson's will, and I think I just learned that the purchase-money debt from 1979 was released in 1988. So, while this could mean that she's part owner of a superfund site, at least it's not encumbered - yet.  
Again, thanks.

Greg

Gregory D. Luetscher  
Phone: 404/562-9677  
Fax: 404/562-9486

Steven Stout

<Steven.Stout@state.tn.us>

To

Greg Luetscher/R4/USEPA/US@EPA

03/29/2006 04:58

cc

PM

Burl Maupin

<Burl.Maupin@state.tn.us>,,

Robert

Powell

<Robert.Powell@state.tn.us>

Subject

Re: Smokey Mtn Smelters - access  
issue

Greg,

We just use a simple letter to make someone a designee. We are more than happy to make EPA a designee of the Commissioner under 68-212-216 for purposes of site access. My research tells me that the widow has at least an undivided part interest in the property as a tenant in common.

Real estate has to vest under the state law. And this applies whether this is an intestate estate or there is a will. An unprobated will would not have any effect on the vesting of title. So, we would write this letter to the widow and announce that EPA is the designee. EPA would then have the statutory right of access.

>>> Luetscher.Greg@epamail.epa.gov> 03/08/06 9:37 AM >>

(See attached file: Access letter 2-9-05.doc)

(See attached file: Access letter 2-9-05.doc) (See attached file: moa letter\_10-05.pdf)


[attachment "Access letter sms.doc" deleted by Greg Luetscher/R4/USEPA/US]

(See attached file: sms real estate records.pdf)

Blake Sterling /R4/USEPA/US  
08/13/2008 09:31 AM

To Teresa Mann/R4/USEPA/US  
cc  
bcc  
Subject Fw: Smokey Mtn Smelter

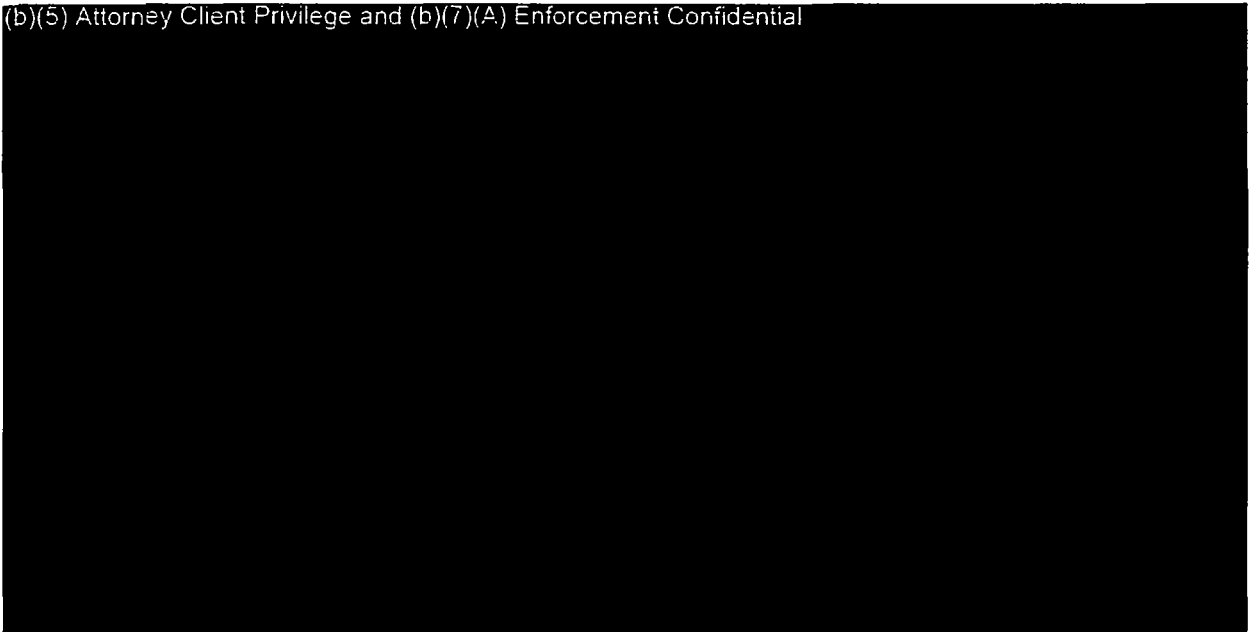
— Forwarded by Blake Sterling/R4/USEPA/US on 08/13/2008 09:30 AM —

Greg  
Luetscher/R4/USEPA/US  
03/30/2007 04:02 PM

To Karen Buerki/R4/USEPA/US@EPA, Loftin  
Carr/R4/USEPA/US@EPA  
cc Blake Sterling/R4/USEPA/US@EPA  
Subject Smokey Mtn Smelter

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Thanks.

Greg

Gregory D. Luetscher  
Ph: (404) 562-9677  
Fax: (404) 562-9486

Blake Sterling /R4/USEPA/US  
08/13/2008 09:29 AM

To -Teresa Mann/R4/USEPA/US@EPA  
cc  
bcc  
Subject Fw: Smoky Mountain Smelter

I am sending you a couple of e-mails that explain some of the accewss issues and communications we have had about this site.

— Forwarded by Blake Sterling/R4/USEPA/US on 08/13/2008 09:26 AM —

Jose Negron/R4/USEPA/US  
11/13/2007 12:22 PM



To Greg Luetscher/R4/USEPA/US@EPA, Jose  
Negron/R4/USEPA/US@EPA, Felicia  
Jackson/R4/USEPA/US@EPA, Blake  
Sterling/R4/USEPA/US@EPA  
cc David Clay/R4/USEPA/US@EPA, Jim  
McGuire/R4/USEPA/US@EPA, MaryC  
Johnson/R4/USEPA/US@EPA, Tony  
Moore/R4/USEPA/US@EPA  
Subject Re: Smoky Mountain Smelter

Greg:

You were invited to the meet. You didn't not show up, nothing I can do. The action memo I sent was just a very rough rough draft to give you something to work with. I am working on the action memo and expect to have it finalized by first week December which will address some of you hazardous waste concerns.

I would like to see the June 23, 2006 letter so that I can have a better understanding of your concerns. On another note the sampling might not be referenced on the AM but the findings are/will be.

Had you attended the meeting it would have probably been made clear that thus far there is no hard connection to the prp's.

Finally, let me know if you are available to meet with Felicia and Blake on either Monday December 3 or Tuesday, December 4 and I will set it up.


Thanks  
Jose

José A. Negrón  
On Scene Coordinator  
US-EPA-ERRB  
61 Forsyth Street  
Atlanta, GA 30303  
Voice 404-562-8754  
Cell 404-386-4657  
Fax 404-562-8699

mailto:negron.jose@epa.gov  
Greg Luetscher/R4/USEPA/US

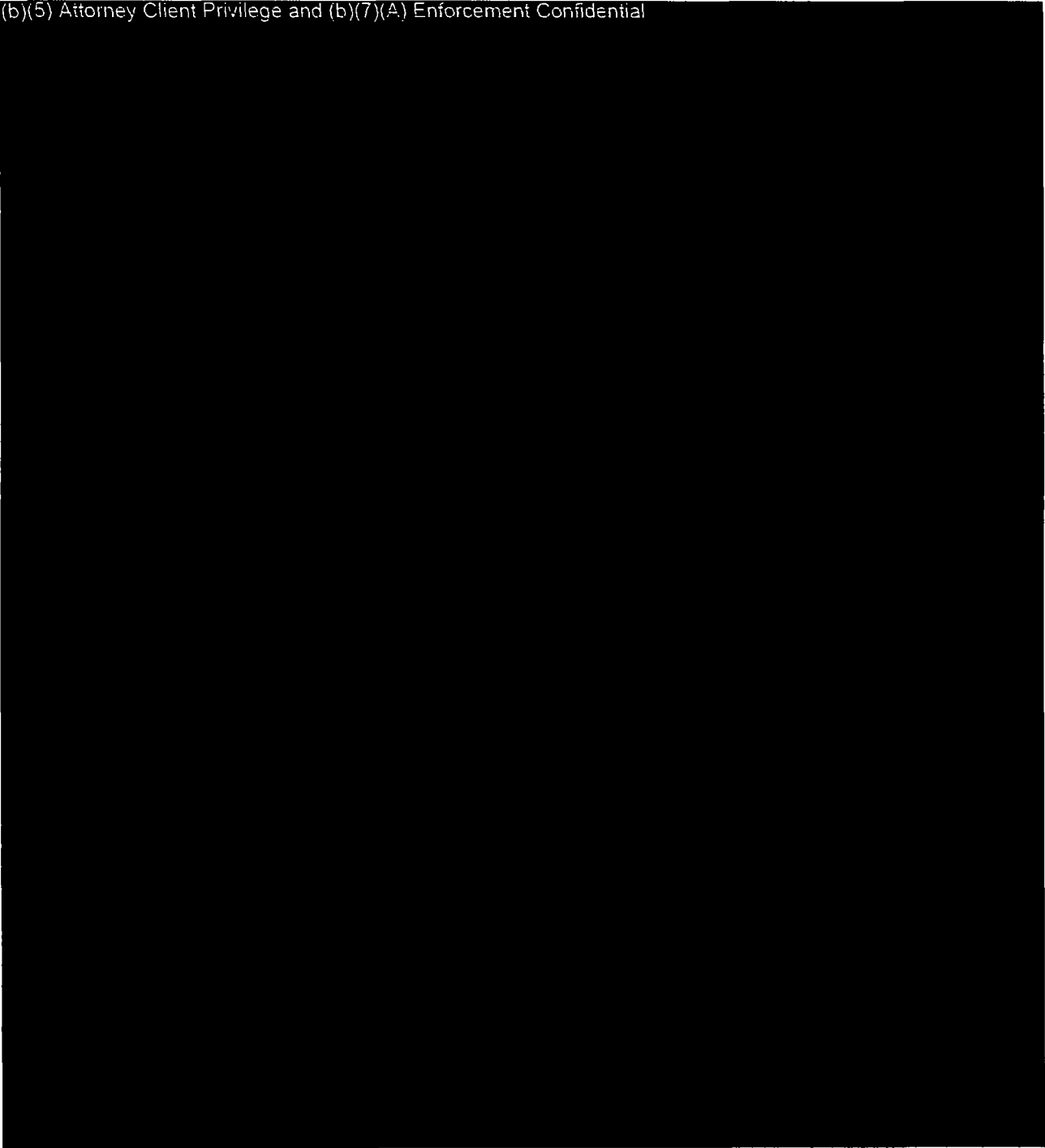
*ML*

Greg  
Luetscher/R4/USEPA/US  
11/13/2007 11:41 AM

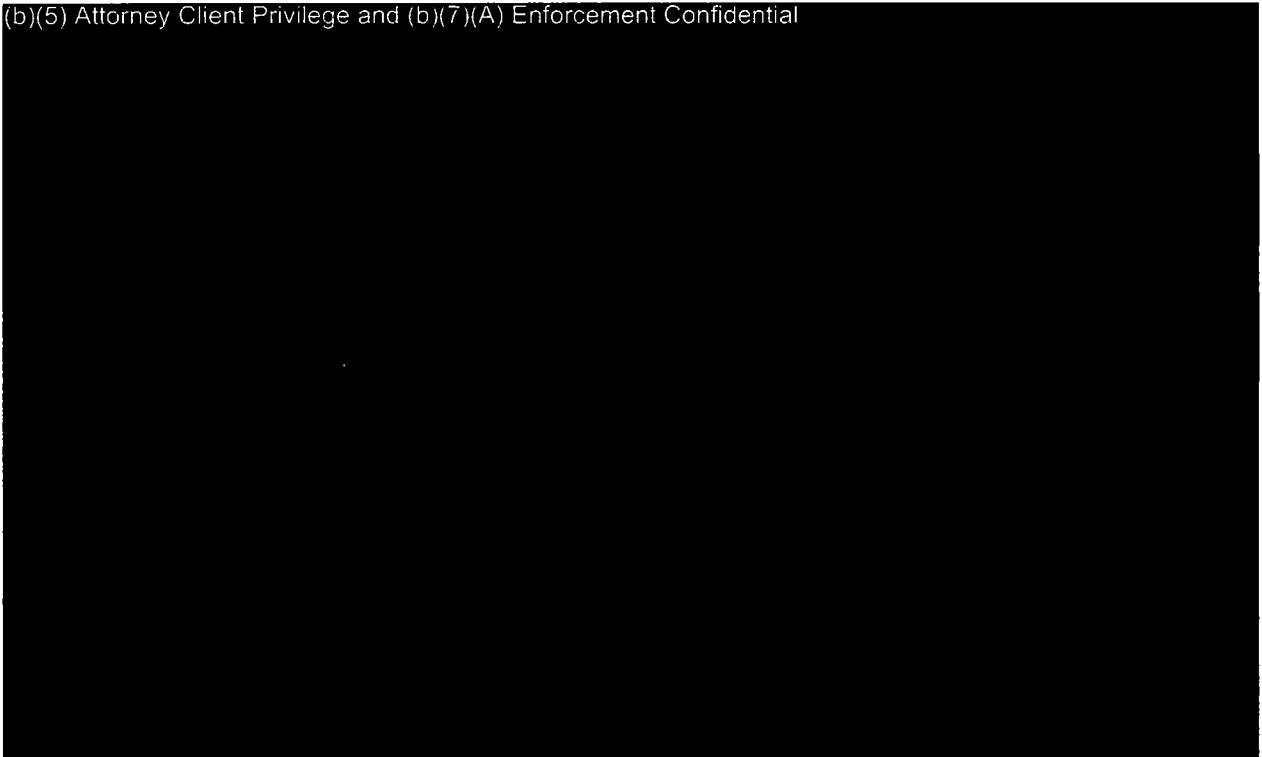
To Jose Negron/R4/USEPA/US@EPA  
cc David Clay/R4/USEPA/US@EPA, Jim  
McGuire/R4/USEPA/US@EPA,  
negron.jose@epamail.epa.gov, Tony  
Moore/R4/USEPA/US@EPA, MaryC  
Johnson/R4/USEPA/US@EPA  
Subject Re: Smoky Mountain Smelter 

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(b)(5) Attorney Client Privilege and (b)(7)(A) Enforcement Confidential



Greg

Gregory D. Luetscher  
Ph: (404) 562-9677  
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Jose Negron/R4/USEPA/US



Jose Negron/R4/USEPA/US

11/09/2007 11:04 AM

To: David Clay/R4/USEPA/US@EPA,  
negron.jose@epamail.epa.gov  
cc: Greg Luetscher/R4/USEPA/US@EPA, Jim  
McGuire/R4/USEPA/US@EPA, Tony  
Moore/R4/USEPA/US@EPA  
Subject: Re: Smoky Mountain Smelter 

David:

Securing access to the site is the only issue that needs to be worked on. I have already met with the EPM and the civil investigator and we are ready to go once the access issue is solved.

Thanks  
Jose

José A. Negrón  
On Scene Coordinator  
US-EPA-ERRB

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mailto:negron.jose@epa.gov  
David Clay/R4/USEPA/US



David Clay/R4/USEPA/US

11/02/2007 09:16 AM

To Jim McGuire/R4/USEPA/US@EPA  
cc Jose Negron/R4/USEPA/US@EPA, Greg  
Luetscher/R4/USEPA/US@EPA, Tony  
Moore/R4/USEPA/US@EPA  
Subject Smoky Mountain Smelter

Jim,

I sent out the list of removal actions you indicated would be moving forward in the near future. Smoky Mountain Smelter has been identified as having potential issues. I recommend that the OSC, attorney and EPM (who is this Tony), get together ASAP and discuss what issues need to be addressed.

I'll be away most of this month so perhaps Jim you can meet with them to see what needs to be done.

Thanks

David K. Clay, Chief  
CERCLA/Water Legal Support Branch  
Office of Environmental Accountability  
Region 4, U.S. EPA  
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Atlanta, GA 30303  
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404-562-9486 (fax)  
clay.david@epa.gov